

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2010-KA-01480-COA

BRUCE BRADLEY SR.

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 08/24/2010
TRIAL JUDGE: HON. JAMES T. KITCHENS JR.
COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT: LESLIE S. LEE
ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: FORREST ALLGOOD
NATURE OF THE CASE: CRIMINAL - FELONY
TRIAL COURT DISPOSITION: CONVICTED OF AGGRAVATED ASSAULT
AND SENTENCED TO TWENTY YEARS IN
THE CUSTODY OF THE MISSISSIPPI
DEPARTMENT OF CORRECTIONS, WITH
TEN YEARS TO SERVE, TEN YEARS
SUSPENDED, AND FIVE YEARS OF POST-
RELEASE SUPERVISION
DISPOSITION: AFFIRMED: 11/29/2011
MOTION FOR REHEARING FILED: 12/20/2011: DENIED; AFFIRMED:
01/15/2013
MANDATE ISSUED:

MODIFIED OPINION ON MOTION FOR REHEARING

EN BANC.

GRIFFIS, P.J., FOR THE COURT:

¶1. The motion for rehearing is denied, and our original opinion is withdrawn with this opinion substituted in lieu thereof.

¶2. Bruce Bradley Sr. appeals his conviction for aggravated assault under Mississippi Code Annotated section 97-3-7(2) (Rev. 2006). He claims that the circuit judge improperly denied his request for a mental evaluation to determine whether he was fit to stand trial. We find no error and affirm.

FACTS

¶3. Bradley attended the 2009 Roast and Boast, a local music and food festival held at the Lowndes County Fairgrounds. Drew Toler was also at the festival with a group of his coworkers and customers. Near the end of the evening, Toler and a couple of his friends went over to the stage to listen to the band.

¶4. Toler testified Bradley spun him around and accused him of stealing a beer from Bradley's cooler. Toler claims he coolly responded that he had not stolen the beer. Then, Bradley punched Toler in the face while holding a beer can in his punching hand. Karen Smith and Keegan Hayes, two of Toler's friends, corroborated Toler's version of the incident.

¶5. Bradley testified Toler took a beer from Bradley's cooler and left an empty can sitting on top of the cooler. When Bradley returned the empty can and asked Toler for his beer back, Toler attempted to stuff the empty can in Bradley's shirt pocket. Bradley admitted he punched Toler, but he insisted that there was no beer can in his hand when he hit Toler.

¶6. Dr. James Monroe, an emergency-room physician, testified he examined Toler later that evening. Toler's eye was severely swollen and bleeding. After conducting a CAT scan, he determined several bones around Toler's eye were fractured. He referred Toler to a specialist, and Toler had surgery to repair those fractures.

¶7. Bradley was charged with aggravated assault. The case was initially set for trial on May 24, 2010, but was reassigned to a different circuit judge and continued until August 23, 2010. On that morning, Bradley's attorney filed a petition to determine Bradley's mental competency. The petition claimed that Bradley's attorney had reasonable cause to believe Bradley might be so mentally incompetent he could not understand the proceedings against him or properly assist in his defense.

¶8. Bradley's mother, Janice Gore, testified Bradley had been living with his girlfriend until about a week before trial, when he moved into a shed next to his grandmother's house. Bradley's mother said that dealing with him was like dealing with a child. She testified she took care of Bradley's cooking, cleaning, and other household chores. But she said he could perform such tasks if he had a space to do so.

¶9. Bradley presented inadmissible evidence he was disabled due to mild mental retardation, obesity, sleep apnea, and hypertension. This evidence was an unsponsored letter written by an attorney, who apparently had represented Bradley in proceedings to receive disability benefits. The letter noted Dr. James R. Lane determined Bradley had a full-scale IQ of 58, a verbal IQ of 63, and a performance IQ of 58. Dr. Lane found that Bradley was not able to maintain concentration or attention. The letter states Bradley received social promotions until the eleventh grade, and Bradley was fired from most of his jobs because he could not stay awake.

¶10. Wyatt Mills, the probation officer who conducted Bradley's pre-sentence report, testified Bradley was able to communicate with him effectively. Bradley understood and answered the questions posed by Mills. Mills testified one of the questions he asked was

whether Bradley had any physical or mental handicaps, and Bradley did not report any. The pre-sentence report showed that Bradley had no history of alcohol or drug abuse. Additionally, Bradley had been employed as both a truck driver and laborer.

¶11. Upon hearing this evidence, the circuit judge concluded that there was no indication that Bradley suffered from a mental defect that would cause him to be unable to understand that nature and consequences of the trial. There was no indication that he would not be able to assist in his defense. Therefore, the circuit judge denied the petition for a determination of mental competency.

¶12. Bradley proceeded to trial, and the jury found him guilty of aggravated assault. He was sentenced to twenty years in the custody of the Mississippi Department of Corrections, with ten years to serve and ten years suspended. Bradley was further sentenced to five years of post-release supervision.

STANDARD OF REVIEW

¶13. Constitutional due process requires that a person accused of a crime may only be tried if he is legally competent. *Lokos v. Capps*, 625 F.2d 1258, 1261 (5th Cir. 1980). Uniform Rule of Circuit and County Court 9.06 requires a trial court to order a defendant to undergo a mental examination if, upon “its own motion or upon motion of an attorney, [the trial court] has reasonable ground to believe that the defendant is incompetent to stand trial[.]” The determination of whether a trial court has a “reasonable ground” to suspect incompetency is addressed to the discretion of the trial judge. *Harden v. State*, 59 So. 3d 594, 601 (¶14) (Miss. 2011).

¶14. The standard of review for an appellate court to determine if there was an abuse of

discretion is whether “the trial judge received information which, objectively considered, should reasonably have raised a doubt about the defendant’s competence and alerted [the judge] to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense.” *Goff v. State*, 14 So. 3d 625, 644 (¶66) (Miss. 2009) (quoting *Conner v. State*, 632 So. 2d 1239, 1248 (Miss. 1993) (overruled on other grounds by *Weatherspoon v. State*, 732 So. 2d 158 (Miss. 1999)).

ANALYSIS

¶15. In this case, the circuit judge heard testimony showing Bradley had lived in the community, had worked at least part-time, and could take care of his basic needs. The circuit court heard testimony that Bradley answered questions in his pre-sentence investigation that included whether he suffered any mental defect, and nothing indicated he was not competent to assist in his own defense or understand the nature of the proceedings and charges brought against him. The circuit judge characterized the evidence introduced to support the petition for a determination of Bradley’s mental capacity as “a letter . . . from an attorney who I think kind of specialized in bankruptcy, for one thing, and also represent[ed] people before the Social Security Administration.”

¶16. The circuit judge also noted, “I don’t even have copies of these tests.” So, at the time the circuit judge was called upon to determine whether or not to order the competency evaluation, which counsel had not sought until the very day of trial, the only information he had before him was Bradley’s mother’s testimony that he functioned in society, but with difficulty, and an unsponsored letter that referenced intelligence scores from an unknown test.

¶17. While there is no precise statement of what quantum of evidence necessitates a trial judge to order a mental evaluation, the United States Supreme Court has explained “evidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required.” *Drope v. Missouri*, 420 U.S. 162, 180 (1975); *see also Staten v. State*, 989 So. 2d 938, 946 (¶¶18-19) (Miss. Ct. App. 2008). The record shows that when Bradley’s attorney moved for a competency hearing, the circuit judge had information that supported either granting or denying the motion. But, the circuit judge found, on balance, more information supported denying the motion.

¶18. Our review is limited to abuse of discretion. *Harden*, 59 So. 3d at 601 (¶14). Mills testified Bradley was able to communicate effectively and did not report any mental disability when Mills asked if he had any such disability. Given the limited information the circuit judge had before him when he ruled on the motion for a competency evaluation, we do not find he abused his discretion in denying it.

¶19. However, Uniform Rule of Circuit and County Court 9.06 provides a trial judge’s duty to order a competency evaluation extends into the trial itself, and if it becomes apparent during trial that a defendant may be incompetent, then an examination should be ordered. In this case, Bradley’s own testimony at trial showed the circuit judge was correct in determining Bradley was competent to aid his own defense and understand the nature of the charge against him. Bradley testified he had lived in Lowndes County for thirty-six years and fathered two children.

¶20. Bradley testified he purchased a case of beer and put it in his cooler prior to attending

the Roast and Boast. When he got to the Roast and Boast, he put his cooler at his “family’s booth.” Bradley testified he only struck the victim after the victim stole a beer from his cooler and provoked him by trying to place an empty beer can in his shirt pocket and laughing at him. Bradley referred to the incident at issue as “just a fight.”

¶21. On cross-examination, Bradley reiterated he only struck the victim with his fist, and denied using any “blunt object,” such as a “beer bottle,” to inflict the injuries to the victim’s eye socket. Further, Bradley was steadfast in claiming that the victim struck him in the eye with a fist, and he suffered a cut and black eye. The record shows Bradley understood the questions posed by his own attorney as well as the prosecutor and answered them fully and logically.

¶22. Bradley’s counsel asserts Bradley’s incompetence is shown by Bradley’s failure to disclose the name of a witness who Bradley testified was standing near his cooler at the Roast and Boast and who could have testified in support of Bradley’s contention that he was not the aggressor. Further, Bradley’s counsel argues Bradley did not disclose to him the name of an emergency medical technician (EMT) who treated injuries Bradley contended the victim inflicted upon him.

¶23. However, on cross-examination, the prosecutor called into question Bradley’s veracity by asking him why he had not disclosed these names. Bradley answered simply that he chose not to do so. This non-disclosure did not necessarily show incompetence. Rather, the cross-examination implied Bradley had invented fictional witnesses and testified falsely about what had occurred. The circuit judge is best suited to judge the demeanor of witnesses. Thus, nothing in the record shows the circuit court abused its discretion when it did not order a

competency hearing. Therefore, there cannot be any error.

¶24. We find Bradley failed to show there was any reasonable ground to conclude he was not competent to stand trial, and the trial court did not abuse its discretion in denying the petition to determine competency. Thus, Bradley's assignment of error is without merit.

¶25. THE JUDGMENT OF THE CIRCUIT COURT OF LOWNDES COUNTY OF CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH TEN YEARS TO SERVE, TEN YEARS SUSPENDED, AND FIVE YEARS OF POST-RELEASE SUPERVISION, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LOWNDES COUNTY.

LEE, C.J., IRVING, P.J., BARNES, ISHEE, ROBERTS, MAXWELL AND FAIR, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION. JAMES, J., NOT PARTICIPATING.

CARLTON, J., DISSENTING:

¶26. I respectfully dissent. I submit this dissent due to the following constitutional concerns in this case: (1) the violation of procedural due process by the denial of Bradley's request for access to the State's procedures for a psychiatric examination upon raising a reasonable question of his competency to stand trial, and (2) Bradley and his counsel presented sufficient evidence to satisfy his burden of proof to raise a reasonable question as to his legal competency to stand trial, and his ability to understand the proceedings and rationally assist in making his defense.

I. Constitutional Right to Not Be Tried While Legally Incompetent and Procedural Due Process

¶27. To satisfy constitutional procedural-due-process obligations, this case should be remanded with directions for the trial court to order a mental examination in accordance with Uniform Rule of Circuit and County Court 9.06, since the overwhelming weight of the

evidence in the record before the trial court shows Bradley raised reasonable grounds to question his competence to stand trial.¹ The Mississippi Supreme Court in *McGinnis v. State*, 241 Miss. 883, 891, 133 So. 2d 399, 401 (1961), previously addressed this issue in holding that compliance with due process required that, before trial, an inquiry must be made into the question of whether the defendant's mental condition makes it impossible for him to conduct a rational defense. *See also* Miss. Code Ann. § 99-13-11 (Rev. 2007); *Medina v. California*, 505 U.S. 437, 448 (1992); *Patton v. State*, 34 So. 3d 563, 571-72 (¶¶24-25) (Miss. 2010) (supreme court requires enforcement with judicial rules promulgated by supreme court pursuant to its constitutional authority); *Sanders v. State*, 9 So. 3d 1132, 1136 (¶¶14-16) (Miss. 2009) (competency hearing required if sufficient doubt raised about defendant's competency).

¶28. In reviewing the denial by the trial court of Bradley's request for access to a pretrial mental examination of his legal competency, we must recognize the demands of procedural due process as explained by the United States Supreme Court in *Medina*, 505 U.S. 437, in regards to state criminal proceedings. The Supreme Court explained there that constitutional procedural due process required a state to comply with its own procedures set forth in its own

¹ *See Emanuel v. State*, 412 So. 2d 1187, 1188-89 (Miss. 1982) (The supreme court announced the procedure to be utilized where there is a serious question about an accused's sanity or competency to stand trial. The trial court heard medical testimony from two psychiatrists and one psychologist, all finding the defendant legally competent. The trial court found the defendant failed to meet his burden and submitted the issue to the jury during trial); *Richardson v. State*, 767 So. 2d 195, 203 (¶41) (Miss. 2000) (acknowledging that procedures set forth in *Emanuel* had been approved by the U.S. Supreme Court, citing *Evans v. State*, 725 So. 2d 613, 660 (Miss. 1997)).

criminal laws to ensure fairness in state court proceedings.² *Id.* at 450-51. The *Medina* Court recognized that criminal defendants possess a constitutional right to not be tried while legally incompetent. *Id.* at 449. In order to comply with procedural due process, states must provide a defendant with access to the state's procedures for making a competency evaluation upon presentation of reasonable grounds to question the defendant's competency.³ *See id.* The Supreme Court explained that states must comply with their obligation to provide a defendant access to procedures, as defined by the particular state, for evaluating competency, even though the defendant bears the burden of proving a lack of legal competency after undergoing a mental evaluation. *See id.* State statutes requiring a mental evaluation by a medical expert reflect legislative deliberation in enacting laws to regulate the subject of expert evidence in determining legal competency in criminal trials.⁴ State statutes requiring mental evaluations upon a sufficient showing provide the court with expert medical evidence from an impartial expert witness with no interest in the proceeding and no allegiance to either side of the controversy.⁵

² The Court in *Medina* acknowledged a significant difference between a claim of legal incompetency and a claim of not guilty by reason of insanity.

³ *See Tarrants v. State*, 236 So. 2d 360, 364 (Miss. 1970).

⁴ *Sanders*, 9 So. 3d at 1136 (¶¶14-16), 1139 (¶26) (reversed and remanded for a new trial where trial court ordered mental examination, but upon completion, trial court failed to make an on-the-record finding of competency); *Coleman v. State*, 2009-KA-01350-COA, 2012 WL 1674292, *3-4 (¶¶12-13) (Miss. Ct. App. 2012) (mental examination ordered by trial court conducted by two psychologists and a psychiatrist; on appeal, no error found in the trial court's denial of the defense's request for a full competency hearing where trial court provided on-the-record finding of competence supported by the mental-examination conclusions).

⁵ *See McGinnis v. State*, 241 Miss. 883, 893, 133 So. 2d 399, 402 (1961).

¶29. The rules promulgated by the Mississippi Supreme Court, as set forth in the Uniform Rules of Circuit and County Court, like *Medina*, require compliance with judicial rules and applicable state and federal criminal laws to ensure fairness in the proceedings.⁶ The supreme court in *Patton* specifically addressed enforcement of judicial rules, such as Rule 9.06, acknowledging that “the bench and bar” were entitled to rely on such enforcement by the judiciary. *Patton*, 34 So. 3d at 572 (¶25). In *Patton*, the court acknowledged its previous precedent set forth in *Sanders*, 9 So. 3d at 1136-39 (¶¶14-26), where the supreme court held that a trial court must conduct a competency hearing on a defendant’s motion, or sua sponte, if there is sufficient doubt about the defendant’s competency. *See Patton*, 34 So. 3d at 571 (¶24). The supreme court further stated that trial courts possess a duty to comply with the judicial rules promulgated by the Mississippi Supreme Court using its constitutional powers. *Id.* at 572 (¶¶25-26).

¶30. This case addresses the failure of the trial court to grant the defense’s request for a mental examination by a psychiatrist in accordance with Rule 9.06. Jurisprudence reflects that the supreme court distinguishes between the mental examination and the on-the-record competency hearing. The mental examination provides the court with expert medical evidence to assist the court in determining the defendant’s competency to stand trial. In *Sanders*, 9 So. 3d at 1136 (¶¶15-16), the trial court granted the defense’s motion for a mental examination.⁷ However, upon conclusion of the mental examination, the trial court failed to

⁶ *Patton*, 34 So. 3d at 572 (¶25).

⁷ *See* URCCC 9.06; Miss. Code Ann. § 99-13-11. Both Rule 9.06 and section 99-13-11 require a mental examination when the defendant’s competence is reasonably in question.

provide a definitive on-the-record finding of competence, and the trial court held no competency hearing on the record. Therefore, the supreme court reversed and remanded for a new trial.⁸ Both Rule 9.06 and section 99-13-11 require a mental examination when the defendant's competence is reasonably in question.⁹ Once the trial court receives evidence from any source raising a reasonable ground to believe the defendant lacks competence to stand trial, then the court is required to order a mental examination. URCCC 9.06; *Dusky v. United States*, 362 U.S. 402, 403 (1960).

¶31. In *McGinnis*, 241 Miss. at 892, 133 So. 2d at 402, the Mississippi Supreme Court found that the affidavit of the defendant's attorneys sufficiently established a prima facie showing since the defendant's attorneys stated in the affidavit that the defendant was incapable of conferring with his attorneys or making a rational defense. The attestation of Bradley's counsel in this case, like the attorneys' affidavit in *McGinnis*, established a prima facie showing that Bradley's counsel had reasonable cause to question Bradley's legal competence to stand trial, particularly in light of the additional evidence regarding Bradley's

⁸ Rule 9.06 provides a trial court "shall" order a psychiatric evaluation if the court has reasonable grounds to believe the defendant is incompetent to stand trial. Section 99-13-11 provides the circuit court may order a mental examination by a competent psychiatrist or psychologist when "the mental condition of a person indicted for a felony is in question."

⁹ Section 99-13-11 provides:

In any criminal action in the circuit court in which the mental condition of a person indicted for a felony is in question, the court or judge in vacation on motion duly made by the defendant, the district attorney or on the motion of the court or judge, may order such person to submit to a mental examination by a competent psychiatrist or psychologist selected by the court to determine his ability to make a defense; provided, however, any cost or expense in connection with such mental examination shall be paid by the county in which such criminal action is pending.

disability records, his full-scale IQ of 58, and the testimony of Gore as to her son's lack of mental capacity.

¶32. In sum, our precedent establishes that constitutional procedural due process requires that the State provide the defendant access to the procedures for conducting a mental examination by a medical professional as set forth in Rule 9.06 upon presentation of reasonable grounds. Neither Rule 9.06, as promulgated by the Mississippi Supreme Court, nor section 99-13-11, allows the trial court to forego state-defined procedures for conducting a mental examination upon a showing of reasonable grounds to question the defendant's competency. In light of the overwhelming evidence presented, significantly including the petition's attestation by Bradley's attorneys, I submit that the trial court erred in denying Bradley a mental examination finding that Bradley failed to show reasonable grounds to question his competency. Moreover, the trial court's denial of the mental examination violated the demands of constitutional procedural due process to ensure fairness in the proceedings by failing to follow state procedures for the mental evaluation of the defendant by a medical expert to aid the court in determining the defendant's legal competence to stand trial when reasonably in question. *Martin v. State*, 871 So. 2d 693, 697 (¶17) (Miss. 2004) (key consideration is whether trial court possessed reasonable grounds).

¶33. The standard for competence to stand trial is whether the defendant possesses "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and possesses a "rational as well as factual understanding of the proceedings against him." *Martin*, 871 So. 2d at 697-98 (¶17) (quoting *Dusky*, 362 U.S. at 402).

¶34. In *Howard v. State*, 701 So. 2d 274, 280 (Miss. 1997) (abrogated on other grounds)

(citations omitted), the supreme court explained that the four-part test for competency to stand trial mandates that a defendant is one:

(1) who is able to perceive and understand the nature of the proceedings; (2) who is able to rationally communicate with his attorney about the case; (3) who is able to recall relevant facts; (4) who is able to testify in his own defense if appropriate; and (5) whose ability to satisfy the foregoing criteria is commensurate with the severity of the case.

¶35. Rule 9.06¹⁰ further establishes that:

If before or during trial the court, of its own motion or upon motion of an attorney, has reasonable ground to believe that the defendant is incompetent to stand trial, the court shall order the defendant to submit to a mental examination by some competent psychiatrist selected by the court in accordance with [section] 99-13-11 of the Mississippi Code Annotated[.]

After the examination the court shall conduct a hearing to determine if the defendant is competent to stand trial. After hearing all the evidence, the court shall weigh the evidence and make a determination of whether the defendant is competent to stand trial.

¶36. “[T]o warrant a mental evaluation, the trial court must find from the evidence that there is a probability, not a mere possibility, that the defendant is incapable of making a rational defense.” *Staten v. State*, 989 So. 2d 938, 946 (¶18) (Miss. Ct. App. 2008) (citing

¹⁰ Rule 9.06 now requires a competency hearing when a court orders a mental evaluation. However, prior to the supreme court promulgating this rule, the order of a mental evaluation did not automatically trigger a mandatory competency hearing. In *Lokos v. Capps*, 625 F.2d 1258, 1261 (5th Cir. 1980), the United States Court of Appeals for the Fifth Circuit suggested the following test for reviewing a decision to forego a competency hearing:

Did the trial judge receive information which, objectively considered, should reasonably have raised a doubt about [the] defendant's competenc[y] and alerted him to the possibility that the defendant could neither understand the proceedings[,] appreciate their significance, nor rationally aid his attorney in his defense?

Richardson v. State, 767 So. 2d 195, 203 (¶41) (Miss. 2000)). An appellate court “will affirm the trial court’s finding¹¹ that the evidence does not show a probability that the defendant is capable of making a rational defense unless the decision is against the overwhelming weight of the evidence.” *Id.* (footnote added). In this case, a review of the record shows that the trial court decision was against the overwhelming weight of the evidence. This dissent now addresses the overwhelming evidence raising reasonable grounds to question Bradley’s legal competence sufficient to warrant a mental examination in accordance with section 99-13-11 and Rule 9.06.

II. Appellant Presented Sufficient Evidence to Raise Reasonable Question as to his Legal Competence to Stand Trial

¶37. In this case, the record reflects that on August 23, 2010, the day of trial,¹² Bradley’s counsel filed a petition to determine Bradley’s mental competency. The petition alleged that Bradley was mentally retarded and lacked legal competency. Like the affidavit of counsel in *McGinnis*, 241 Miss. at 892, 133 So. 2d at 402, Bradley’s counsel provided in the petition that he possessed reasonable cause to question Bradley’s competency to stand trial. The supreme court in *McGinnis* determined that the affidavit of defense counsel established a prima facie showing sufficient to raise a reasonable question as to the defendant’s legal

¹¹ The case presently before us concerns whether the trial court erred in denying the defense’s request for a mental exam by the identified medical expert. This case differs from cases where the trial court indeed ordered a mental examination and later denied a request for a competency hearing in court, when the mental examination reflected no basis to question legal competence.

¹² The record also shows that on the morning of trial, the senior judge in that district asked the trial judge to handle this case.

competence. *Id.*

¶38. Additionally, Bradley's counsel submitted a letter from R. Gawyn Mitchell, a disability appeals lawyer, which contained a summary of Bradley's disability record reflecting that Bradley displayed mild retardation with a full-scale IQ of 58, and suffered from sleep apnea, obesity, and hypertension. The letter reflected Bradley possessed second-grade-level arithmetic skills.

¶39. Janice Gore, Bradley's mother, also testified regarding Bradley's legal competence. Gore testified that Bradley depended upon her for shelter, food, and medical support. Gore further testified as to Bradley's childlike mind, and she stated her belief that Bradley was incapable of working with an attorney to defend himself. Gore explained that Bradley lacked the ability to distinguish when people are telling the truth or doing things that are not in his best interest. She testified that she talked to Bradley about the upcoming trial. Gore explained in her testimony that she did not think Bradley understood the severity of the trial and the potential jail sentence.

¶40. The trial court also heard testimony from Mills, Bradley's prior probation officer, who prepared a pre-sentence investigation report. After hearing testimony from all of the witnesses, the trial court found Bradley competent to stand trial, and the court proceeded with the trial without granting the mental examination by a psychiatrist or psychologist.

¶41. The majority cites *Harden v. State*, 59 So. 3d 594 (Miss. 2011), to support its finding of no abuse of discretion in the trial court's denial of Bradley's request for a mental examination. However, the facts in *Harden* relative to legal mental competence differ from the facts of the instant case. In *Harden*, the defense counsel filed no motion for a mental

evaluation until after the trial court had rejected Harden's guilty plea. *Id.* at 602-03 (¶¶17-18). The standard for legal competence is the same for the entry of a guilty plea as that required to stand trial. *Dillon v. State*, 75 So. 3d 1045, 1051 (¶18) (Miss. Ct. App. 2010). In contrast to the case before us, in *Harden*, the defense counsel filed no affidavit attesting to any concern of competence, and competence only arose as an issue after rejection of Harden's plea by the court. *Harden*, 59 So. 3d at 602 (¶17).

¶42. During Harden's plea colloquy, Harden claimed he lacked the ability to understand some of the terminology or concepts in the plea petition, but the trial court found Harden only illustrated difficulty understanding issues unfavorable to him. *Id.* at 602-03 (¶18). The trial court also held that Harden failed to provide the court any evidence of his mental state other than his in-court comments and tape-recorded confession. *Id.* at 603 (¶18).

¶43. In contrast to the *Harden* case, Bradley's counsel stated in the petition for a mental examination filed below that he possessed reasonable cause to question Bradley's competence to stand trial. As stated, the trial court heard further testimony from Bradley's mother regarding Bradley's inability to distinguish truth or understand the nature of the proceedings, as well as Bradley's childlike behavior. The record reflects more than sufficient reasonable grounds to question Bradley's legal competence based upon the following: the attestation of Bradley's counsel in the petition to the court for a mental examination; the summary of Bradley's disability record showing a full-scale IQ of 58; and the testimony of Bradley's mother attesting to Bradley's lack of mental competency impacting his ability to understand the nature of the proceedings.

¶44. The court in *Harden* employed no new or unfamiliar standard of review in its analysis.

The *Harden* court relied upon Rule 9.06. *Harden*, 59 So. 3d at 601 (¶14). The *Harden* decision provided that:

[o]n review, the pertinent question is whether the trial judge received information which, objectively considered, should reasonably have raised a doubt about [the] defendant's competence and alerted [the judge] to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense.

Id. (citations and quotation marks omitted). The *Harden* court cited the same authority used in this dissent: *Lokos*, 625 F.2d at 1261.

¶45. Based upon the foregoing, I respectfully submit that the record reflects sufficient evidence was presented to the trial judge objectively raising a reasonable question as to Bradley's competency to stand trial; thus, the trial judge's denial of the defense's request for a mental evaluation was against the overwhelming weight of the evidence. To determine legal competency, the trial judge possesses a duty, pursuant to Rule 9.06, to order the mental examination. Therefore, I respectfully dissent from the opinion of the majority.